Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20054

In the Matter of	)	
	)	CC Docket No. 95-116
Telephone Number Portability	)	DA 96-358

FURTHER COMMENTS OF MFS COMMUNICATIONS COMPANY, INC.

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Dated: August 16, 1996

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MFS Communications Company, Inc. ("MFS"), by its undersigned counsel and pursuant to Section 1.415 of the Commission's rules, submits these comments in response to the Commission's request for further comments on the costs and cost recovery issues governing long-term number portability, as impacted by the Telecommunications Act of 1996.[1]

I. INTRODUCTION AND SUMMARY

As a competitive provider of local telecommunications services, MFS strongly supports the recent efforts by the Federal Communications Commission ("Commission" or "FCC") to develop rules that promote customer choice and competition in telecommunications markets. Promoting number portability is critical to the development of competition in local telephone markets. The prominence of provisions addressing numbering administration and number portability in the Telecommunications Act highlights the importance of numbering issues to the development of competition.

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[1] Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. § ___) ("*Telecommunications Act*").

In the *Report and Order* released by the Commission in this docket last month,[2] the FCC took important steps to implement number portability and to provide for a fair recovery and allocation of the costs associated with interim number portability. The Commission simultaneously released a *Further NPRM* to solicit consideration regarding the issues of recovery and allocation in the context of long-term number portability.

The Telecommunications Act requires that the costs of number portability be recovered from all telecommunications carriers in a competitively neutral manner, rather than from any single group of carriers or customers.[3] It is essential that the Commission use these principles in adopting final cost recovery rules, in order to promote an effective and efficient transition to permanent number portability. Adoption of cost recovery rules that do not conform to the statutory principles under the Telecommunications Act could serve to undermine the pro-competitive goals of the Act by permitting certain carriers to recover more than their fair share of costs, and by placing unfair burdens on new entrants to the market.

II. RECOVERY OF THE COSTS ASSOCIATED WITH NUMBER PORTABILITY

A. Costs Recovered from Telecommunications Carriers Should Include Only Common or Shared Costs, and not Carrier-Specific Costs

In its *Further NPRM*, the Commission tentatively concluded that the following three types of costs are associated with providing long-term service number portability:

> (1) common or shared costs incurred by the industry to establish maintain, and administer the common or shared number portability database and associated general facilities and procedures;
> (2) carrier-specific costs directly related to providing number portability, and,

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2 *Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, FCC 96-286 (June 27, 1996) ("*Report and Order*" or "*Further NPRM*").

3 47 U.S.C. § 251(e)(2).

(3) carrier-specific costs indirectly related to number portability.[4]

The Telecommunications Act requires that the costs of "number portability shall be borne by all telecommunications carriers on a competitively neutral basis."[5] This competitively neutral standard requires that only the common or shared costs associated with number portability (*i.e.* those costs contained in category (1) above) be recovered from all telecommunications carriers.

However, an individual carrier's network costs -- whether directly or indirectly related to long-term number portability (*i.e.* categories (2) and (3) above) -- should *not* be included in the costs of number portability to be recovered from other carriers, but must be the sole responsibility of each individual telecommunications carrier. Just as every carrier today must face the costs of conforming its network to the North American Numbering Plan, or any other industry-wide numbering initiatives or standards, it is entirely appropriate that each carrier bear all of its own network costs associated with number portability. It is *not* appropriate to include the costs incurred by specific incumbent local telephone companies in the recoverable industry-wide, shared costs of number portability, because allowing firms to recover any and all cost changes is a legacy of a regulated monopoly environment, which has no place in the competitive environment envisioned by the Telecommunications Act.

To permit carriers to recover their individual costs from other carriers serves only to subsidize inefficiency and to penalize new entrants, who may be better poised to maintain lower costs as part of their operations. A carrier's individual network upgrades should be the responsibility of the individual carrier and should not be paid for by the carrier's competitors. As MFS noted in its supplemental comments in this proceeding, when air bags were mandated by

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4 *First NPRM* at para. 208.

5 47 U.S.C. § 251(e)(2)

Federal law, all auto manufacturers were required to change their production lines to accommodate the new law.[6] Ford was not permitted to make Toyota pay a charge designed to cover Ford's costs of upgrading its production line, because this was a specific cost incurred as a result of the particular design of Ford's automobiles. Ford and Toyota individually were required to bear the burden of upgrading their facilities to comply with the government's requirement.

B. Carriers Should Not Recover Number Portability Costs from Carrier-Specific Services Sold to Other Telecommunications Carriers

In view of the Commission's efforts to ensure that service charges between telecommunications carriers are cost-based, allowing carriers to pass either the direct or indirect costs of their internal operations onto competitors will retard competition, thereby impeding Congress' intentions under the Telecommunications Act. In other words, to ensure competitive neutrality, a carrier cannot be allowed to recover its number portability costs by passing those costs along to other telecommunications carriers.

When number portability is implemented, every carrier undoubtedly will incur its own network costs and its portion of the shared or common number portability costs. As stated in Section A herein, carriers clearly must be able to recover the *common* number portability costs that are incurred to develop, maintain and administer the shared number portability database system. However, *carrier-specific* costs, whatever they may be, should not be recoverable and should be borne by the individual carrier incurring such costs. It would be contrary to the Telecommunications Act's requirements of competitive neutrality to permit a carrier's individual

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[6] *MFS Comments* at 5.

number portability costs to be recovered by its competitors, by means of inflated interconnection or access charges.

In the *Further NPRM*, the Commission proposed that a carrier's costs of number portability should be recognized as exogenous costs for purposes of adjusting price caps. However, if the Commission forbids carriers from recovering carrier-specific number portability costs, *and MFS reiterates that carrier-specific costs associated with number portability should not be recoverable,* the FCC's proposed policy of allowing price cap incumbents to recoup individual number portability costs as exogenous is inherently discriminatory because such treatment thereby may serve to provide a mechanism for price cap incumbents to pass on their number portability costs to competitors, who are unable to engage in the same behavior.

In order to enforce the Telecommunications Act's requirements of competitive neutrality, as the Commission has recognized in its *Further NPRM,*[7] carriers must be forced to recover their number portability costs from services sold to end-users, and not to services sold to competitors. To this end, the Commission should adopt additional safeguards designed to prohibit carriers from recovering number portability costs by passing such costs through to competitors via increased access charges, compensation charges, interconnection charges, residual interconnection charges or any service sold exclusively to telecommunications resellers. In the absence of such safeguards, carriers will be able to masquerade their direct and indirect carrier-specific number portability costs as increased access or interconnection charges to be borne by their competitors. This practice will serve only to undermine and to inhibit the competitively neutral goals mandated by Congress and upheld by the Commission in this proceeding.

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7 *Further NPRM* at para. 209 ("We also tentatively conclude that section 251(e)(2) does not address recovery of those costs from consumers, but only the allocation of such costs among carriers.)

C. Shared Number Portability Costs Should be Apportioned Among All Telecommunications Providers Based on Net Revenues

In its *Further NPRM,* the Commission proposed that the costs associated with the shared facilities used to provide number portability be allocated "[i]n proportion to each telecommunications carrier's total gross telecommunications revenues minus charges paid to other carriers."[8] The Commission declared that this methodology for cost recovery "[b]est comports with [its] principles for competitively neutral cost recovery . . ."[9]

The Telecommunications Act is unambiguous in requiring that the costs of number portability shall be spread among *all* telecommunications carriers and not allocated to a single class of carriers (*e.g.*, local telephone carriers), a segment of the market (*e.g.*, only carriers whose customers use number portability), or certain carriers' customers. As a result, mechanisms such as a per month or per call charge, which would recover the costs of number portability exclusively from those carriers that use number portability, do not comply with the requirements of the Telecommunications Act, because those carriers that use number portability arrangements are not *all* telecommunications carriers. Similarly, recovering number portability costs through a per line charge is inappropriate, because apportionment based on line counts fall disproportionately on local telephone carriers and not on *all* telecommunications carriers, as required by the plain language of the Telecommunications Act.

Incumbent local telephone companies inevitably will argue that they should not be required to pay for the costs of number portability, because number portability only serves to permit new entrants to pirate their existing customer base. This argument, however, is rendered moot by the Telecommunications Act , which unequivocally requires *all* local

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8 *Further NPRM* at para. 213.

9 *Id.*

telephone carriers to implement number portability, and which compels *all* carriers to bear the burdens associated with number portability costs. As well, the Commission has rejected similar logic in other contexts, such as in the long distance market, where all long distance carriers were required to pay an Equal Access and Network Reconfiguration charge, including AT&T, even though equal access conversations arguably did not benefit AT&T and enabled AT&T's competitors to pirate AT&T's customers.

The most equitable, competitively neutral mechanism for recovering the costs of number portability is a charge based on telecommunications carriers' service revenues, net of payments to intermediaries, as proposed by the Commission in its *Further NPRM* and as discussed herein. Under this mechanism, the net service revenues of a local telephone carrier would be its total telecommunications service revenues, less the interconnection charges, compensation charges, and charges for unbundled network elements that it pays. Similarly, an interexchange company's share of number portability costs would consist of its revenues, net of the access charges it pays and net of any charges it pays for the long distance services it purchases and resells. Allocating the costs of number portability through a carrier's net revenues, minus its carrier payments satisfies Congress' competitively neutral mandate because it is borne by *all* carriers, based on their net revenues earned from sales to end user customers. Moreover, such a mechanism is consistent with how the Commission assesses common carrier regulatory fees and funds Telecommunications Relay Services.

D. States Choosing To Establish A Statewide Database Plan Must Follow The Cost Allocation And Recovery Principles Adopted By The Commission In This Docket

In the *Further NPRM*, the FCC proposes to require that states opting to develop their own statewide number portability database, in lieu of participating in a regionally deployed database arrangement, abide by the pricing principles established in this docket.[10] MFS urges the Commission to develop national funding rules for number portability.

It is imperative that the Commission require all states choosing such an alternative to comply with the number portability pricing principles adopted by the Commission in this proceeding, in order to avoid a situation in which new entrants are forced to litigate number portability funding throughout the United States--an activity that raises new entrants' costs and becomes a barrier to entry. In addition, if funding is limited to common or shared costs, and if carriers are forced to shoulder the burden of their individual costs, the common costs to be recovered in intrastate jurisdictions is likely to be *de minimus*. Thus, if MFS' proposal is implemented by the FCC, there may be little, if any, costs for state regulators to develop recovery mechanisms for.

III. CONCLUSION

The Telecommunications Act plainly requires that the costs of number portability be borne by all telecommunications carriers on a competitively neutral basis. In these further comments, MFS recommends that the Commission permit telecommunications carriers to recoup only the common or shared costs of number portability; that the Commission adopt safeguards to ensure that common costs are recovered from end-users and not from other

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[10] *Further NPRM* at para. 211.

telecommunications carriers, and that the shared cost associated with number portability be apportioned among carriers based on their revenues net of sales to and purchased from intermediaries.

Respectfully submitted,

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Dated: August 16, 1996

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August 1996, copies of the FURTHER COMMENTS OF MFS COMMUNICATIONS COMPANY, INC.; CC Docket No. 95-116, DA 96-358, were served via Hand Delivery or First Class Mail*, U.S. postage prepaid, to all parties on the attached service list.

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